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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

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DARRYL J. SMITH,

Plaintiff,

*versus*

BUREAU OF PRISONS, *et al.*

Defendants.

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CIVIL ACTION NO. 1:04-CV-774

**MEMORANDUM ORDER ADOPTING THE MAGISTRATE  
JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff Darryl J. Smith, an inmate formerly confined at the Federal Correctional Complex in Beaumont, Texas, proceeding *pro se*, brought the above-styled action.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends dismissal for want of prosecution.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, pleadings and all available evidence. No objections to the Report and Recommendation of United States Magistrate Judge were filed by the parties.

Along with his complaint, plaintiff submitted an application to proceed *in forma pauperis* that did not comply with Title 28 U.S.C. § 1915(b)(1). Accordingly, on July 22, 2005, plaintiff was ordered to submit a printout from the Bureau of Prisons showing the average balance in, and deposits made to, his account during the preceding six-month period. Plaintiff's compliance was

due within twenty days from the date of the order. Plaintiff failed to comply with the order of the court.

On August 26, 2005, plaintiff filed a motion dated July 29, 2005, asking the court to issue an order directing the Warden's secretary to provide a copy of his institutional account statement. Plaintiff asserted that prison officials had refused to provide him with an account statement. Therefore, on October 5, 2005, plaintiff was ordered to provide a copy of his inmate account statement or describe the applicable institutional procedures for obtaining such statement and detail his attempts to comply with said procedures. Plaintiff did not respond to this order.<sup>1</sup>

On October 28, 2005, the magistrate judge issued a Report recommending dismissal for want of prosecution. Plaintiff filed no objections. Plaintiff has filed nothing with the court in more than seven months.

Plaintiff has caused significant delay in this action by failing to respond to the court's orders. Additionally, there has been a significant period of total inactivity by the plaintiff, demonstrating a clear record of delay. Without knowing plaintiff's inmate account information, the court is unable to determine whether plaintiff is eligible to proceed *in forma pauperis* or to assess an initial partial filing fee, if appropriate.

The court has considered lesser sanctions and finds them inappropriate in this case. Monetary sanctions are not available to prompt the diligent prosecution of this action because a sales invoice attached to plaintiff's initial application to proceed *in forma pauperis* reveals a balance of only \$25.59 in plaintiff's account. Further, a sales invoice provided September 16,

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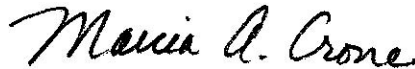
<sup>1</sup> On November 2, 2005, plaintiff filed with the Fifth Circuit Court of Appeals a motion requesting an order directing the Warden's secretary to provide the court with a copy of his institutional account statement for the past six months. The motion, however, is dated July 29, 2005.

2005 reveals a balance of only \$ 0.64. Because lesser sanctions are not available, dismissal is appropriate in this action.

**O R D E R**

Accordingly, the findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

SIGNED at Beaumont, Texas, this 5th day of July, 2006.

A handwritten signature in cursive script, reading "Marcia A. Crone", positioned above a horizontal line.

MARCIA A. CRONE  
UNITED STATES DISTRICT JUDGE